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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,474	10/24/2003	Jadwiga Malgorzata Bialek	F6176(V)	2551

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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/693,474

Applicant(s)

BIALEK ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2-24-06; 4-14-04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 5, 6, 7, 11, 14, 16, 17, 24 & 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Watanabe (5,690,981) and see example 5A and 13a.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al (5,690,981).

Watanabe discloses a low calorie foodstuff with dietary fibers. At examples 5 and 13 emulsions are formed with apple or wheat bran. Butter oil is used in example 5. The emulsifier in example 5 is egg white and the emulsifier in example 13 is egg yolk. Although the HLB of these emulsifiers is not mentioned, the specification, at page 6, suggests that egg yolk is the

preferred emulsifier. Thus one of ordinary skill in the art would expect that the preferred emulsifier would have the HLB value required in the claims. In example 13, a dressing is prepared with vinegar, cottonseed oil, water and wheat bran fiber. The product is described as being "mayonnaise-like". In example 20, mayonnaise is made using konjak as a source of fiber. At column 9, lines 51-67 all of the various dietary fibers are described. In this case vinegar is regarded as an acidulant. The claims appear to differ from Watanabe in the recitation of the oil droplet size and in the recitation of the manner in which the product is emulsified. In Watanabe the emulsions using dietary fibers were described as providing stable emulsions. It would have been obvious to one of ordinary skill in the art to homogenize an emulsion to the extent necessary to provide for a stable emulsion. No unobvious or unexpected result is seen from the use of the particular homogenizer conditions set forth in claim 12 or in the particular droplet size of claims 9 and 10. Although the particular viscosity of the claims is not mentioned, it is clear from Watanabe that foods of varying viscosities are prepared. No unobvious or unexpected result is seen to flow from the particular viscosities set for in the claims. Although cheese and filling are not mentioned, no unobvious or unexpected result is seen from the

application of the products as a filling in doughs. Also no unobvious or unexpected result is seen from the selection of one emulsifier over another.

Claims 1, 24, 5-7, 11, 13, 14, 16, 18, 19, 24 & 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weibel (EP 0295865 or US 4,923,981).

Weibel discloses comestibles containing parenchymal cell cellulose from sugar beet (page 5, lines 38-56). At pages 11 and 12 the products prepared are disclosed. On page 12, the spreads are described as being either oil-in-water or water-in-oil emulsion. In example 4, mayonnaise is made.

Claims 1, 2, 5, 11, 14 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bunger et al. (53,85,748).

Bunger discloses a beverage thickener emulsifier system. The product is disclosed to be an oil-in-water emulsion (abstract). The oil is citrus oil. The fiber that may be included is citrus fiber (column 8, lines 30-42).


No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CAROLYN PADEN 4-5-06  
PRIMARY EXAMINER 1761